THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0119, Lois Fleet v. Milhaven Parks, LLC, the court on February 9, 2007, issued the following order:

The defendant, Milhaven Parks, LLC (Milhaven), appeals a trial court order finding that it breached a contract with the plaintiff, Lois Fleet, and awarding her $11,269.44 with interest and costs. The sole issue raised by Milhaven on appeal is whether the trial court erred in finding that it had breached a contract for sale of a manufactured home. Milhaven argues that the trial court misinterpreted the terms of the parties' sales agreement, erred in finding that Fleet could rescind the agreement and failed to consider Milhaven's right to cure. We affirm.

Not every breach of duty by one party to a contract discharges the duty of performance of the other. Fitz v. Coutinho, 136 N.H. 721, 724 (1993). Whether conduct is a material breach is a question for the trier of fact to determine from the facts and circumstances of the case. Barrows v. Boles, 141 N.H. 382, 388 (1996). We will not reverse the findings of the trial court unless they are unsupported by the record. Id.

The trial court found that the parties entered into an agreement for the sale of a manufactured home and that before the closing took place, 1700 gallons of water ran into the home from an open faucet. The court found that it was Milhaven's responsibility to determine the extent of the damage and to provide that information to Fleet; the trial court found that no one provided any helpful information to Fleet. The court further found that because of its inability or refusal to have timely communication with Fleet concerning the water damage and whether it had been corrected or would be covered under the warranty, Milhaven breached the contract.

Milhaven argues that because the sales agreement provided that warranty issues were to be addressed by the manufacturer, the trial court erred in finding that Milhaven had breached the agreement. Whether the damage might be covered by the manufacturer's warranty, however, was not dispositive of whether the delivery of a home damaged by 1700 gallons of water satisfied the terms of the parties' agreement. The manufacturer was not a party to the sales agreement. The agreement was for the manufacture and delivery of a home. The owner's manual for the home contained an extensive discussion about mold, both its causes and the steps that could be taken to prevent it. The trial court found that Fleet was concerned about the effect of the water in the unit and that Milhaven failed to address her concerns. Given the contract and the record before us, we find no error in the trial court's ruling. See Restatement (Second)

of Contracts § 251 (1981) (failure of obligor to give assurance may be treated as repudiation); id. § 253 comment a (repudiation by obligor under § 251 supports award of damages for total breach).

Milhaven also argues that it had a right to cure. We have not been provided with any of the pleadings or exhibits that were before the trial court. It is the burden of the appealing party to provide this court with a record sufficient to decide its issues on appeal and to demonstrate that it raised them before the trial court. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004); see also Sup. Ct. R. 13. Having reviewed the record before us, we find no evidence that this legal issue was raised before the trial court. Accordingly, we decline to address it on appeal. See State v. Blackmer, 149 N.H. 47, 48 (2003) (appellate review confined to those issues raised before trial court).

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk